IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

MFA.No. 1129 of 2002()

OPMV.3205/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
.....

APPELLANT: PETITIONER

PRAVEEN, AGED 26 YEARS,
S/O.RAJAN, KURUPPASSERY HOUSE,
P.O.KUNDALIYUR, CHETTUVA, THRISSUR DIST.
PIN:680 616.

BY ADV. SRI.K.B.MOHANDAS
SRI.T.G.LELLULAL

RESPONDENTS: RESPONDENTS
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1. K.A.SUNIL, S/O.APPUKUTTAN,
KOCHAKARAN HOUSE, P.O.ENGANDIYUR,
THRISSUR DIST.

2. REGUVARAN, S/O.BALAKRISHNAN,
ARUKETTY HOUSE, PO.ENGANDIYUR,
THRISSUR DIST.

3. THE NEW INDIA ASSURANCE CO.LTD.
BRANCH OFFICE, IIND FLOOR,
PERINCHERY BUILDING, ROUND NORTH,
THRISSUR.

BY ADV. SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28.9.2007, THE COURT ON 28/09/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1129 OF 20O2

Dated this the 28th day of September, 2007

JUDGMENT

Koshy, J.

The petitioner suffered serious injuries in a motor accident. He claimed compensation for an amount of Rs.5,41,000/-, alleging that the accident occurred due to the rash and negligent driving of the second respondent. The offending vehicle was owned by the first respondent and insured by the third respondent Insurance Company. Though the negligence of the second respondent and liability of the Insurance Company were found by the Tribunal, the total amount awarded was only Rs.1,71,800/- including reimbursement of medical expenses. First we will consider the nature of injuries. In paragraph 48 of the award the Tribunal noticed as follows:

> "....Ext.A19 is a copy of the Wound Certificate. Exhibit A25 is the Discharge Certificate. He was discharged, at request, on 22.8.2000. He was admitted to Aswini Hospital, Thrissur on 22.8.2000 itself. Exhibit A24 is a medical certificate dated 25.10.2000 issued from that hospital. The injuries noted are as follows:
>
> 1) Fracture left maxilla.
> 2) Fracture left zygoma.
> 3) Fracture left nasal bone.

4) Cerebral cedema
(These injuries were detected through CT scan of brain)

5) Dislocation right hip joint (reduced and corrected at the Medical College Hospital, Thrissur)

6) Sutured wound of 3 cm long on left temporal area.

7) Multiple healing abrasions.

8) Mobility of two lower incisor teeth right.

Skeletal traction on the right leg was given. He was discharged on 20.9.2000. Exhibit A20 is a Discharge Summary. It is noted in this document that the petitioner developed behavioural changes with sleep disturbance. Psychotic reaction - paranoid - is noted as the diagnosis. He was treated and improved. Exhibit A21 is another Discharge Summary. Exhibit A22 is also a Discharge Summary. Petitioner was disoriented, there was no reaction of pupils and the presence of left subconjunctival haemorrhage are noted in this document along with other injuries. ENT, Dental Ophthalmology, Psychiatry and Ortho consultations were done. Advice given to continue psychiatric medicines and review after 10 days is also evident from Exhibit A22. Exhibit A26 is a certificate dated 29.8.2000 issued from Aswini Hospital, Thrissur. It is certified in this document that the petitioner needed follow up treatment as out-patient for at least three months. Exhibit A30 is a Report of CT scan of brain dated 22.8.2000. Exhibit A31 is a Nerve Conduction Study Report dated 17.10.2000. it is noted, as impression, in this document that the features are highly suggestive of a right sciatic nerve injury, proximal and severe. Petitioner was admitted to the Medical College Hospital on 18.7.2001 and had undergone a surgery on 31.7.2001. He was discharged on 20.8.2001. Exhibit A23 is the Discharge Card. Exhibit A27 is a disability certificate dated 15.9.2002 issued by Dr.K.Balagopal Consultant Orthopaedic Surgeon and

> Lecturer in Orthopaedics, Medical College, Thrissur. Exhibits A27(a) and A27(b) are correction and annexure respectively to Exhibit A27. The injuries suffered by the petitioner are noted in this document also."

2. The Tribunal also accepted the fact that as a result of the accident, the petitioner was under treatment for 15 months and unable to do any work for 15 months. According to the petitioner, in view of the disability, he is unable to work any more. Exhibit A27 is the disability certificate wherein permanent partial disability was assessed as 27%. Since the doctor was not examined, it was not accepted by the Tribunal. But the Tribunal observed as follows:

> "Considering the injuries, including the fractures, sustained by the petitioner, the deposition of the petitioner and the facts stated in Exhibit A27, I am of the view that the petitioner had sustained permanent disability considerably affecting his earning capacity and amenities of life."

3. We are of the opinion that compensation ought to have been granted for 20% disability on the basis of medical certificate. Disability compensation was not calculated on multiplier method. We are of the opinion that the compensation ought to have been calculated on a multiplier method. The petitioner was 24 year old at the time of the accident. The Apex Court held that maximum multiplier should be taken for a motor accident victim between the age 20 and 25. But taking second schedule to the Motor Vehicles Act

as the guideline, we fix 17 as the multiplier. He was employed as a loading and unloading worker and he was also doing unloading of fish. His occupation was accepted by the Tribunal. The Tribunal discussed the question regarding his employment and observed as follows:

> "Exhibit A29 is an identity card of the petitioner issued by Chettuva Fish Landing Centre Labour Union. Exhibit A33 is a certificate dated 20.9.2001 issued from that Union stating that the petitioner was a member of that Union with effect from 1.1.1996 and other matters. Exhibit A28 is a receipt dated 12.3.1999 issued by the Fisheries Officer, Kerala Fishermen's Welfare Fund Board, Nattika which shows that the petitioner had remitted his contribution to the Fund for the period from 1994 to 1998, etc. In view of these facts, I find no reason to disbelieve the occupation claimed by the petitioner."

But the Tribunal fixed only Rs.2,000/- as monthly income. According to the claimant, he was getting Rs.6,000/- per month. Considering the nature of the job he was having, we are of the opinion that atleast Rs.100/- per day ought to have been taken for calculation of compensation . Thus, Rs.2,500/- ought to have been taken as his monthly income. With regard to the disability, even though it is contended that he was unable to do the work of loading and unloading, according to the petitioner, he is entitled to 100% disability, we have already held that the petitioner sustained also 20% personal disability. If that be so, the compensation for disability

as well as loss of earning power will be:

$$\text{Rs.2500} \times 12 \times \frac{20}{100} \times 17 = \text{Rs.1,02,000}$$

The disability compensation awarded by the Tribunal is only Rs.75,000/-. So, additional compensation payable for disability on loss of earning capacity is Rs.27,000/-. The Tribunal accepted the fact that for 15 months the petitioner was under treatment and he has not earned anything for that period. Taking Rs.2,000/- as monthly income, Rs.30,000/- was awarded. Since we reassessed the monthly income as Rs.2,500/-, he is entitled to get an additional amount of Rs.7,500/- for loss of actual earnings. Thus, the petitioner is entitled to an additional amount of Rs.34,500/-. The above amount should be deposited by the third respondent Insurance Company with 7.5% interest from the date of application till the date of deposit over and above the compensation awarded by the Tribunal.

The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1129 OF 2002

JUDGMENT

28.9.2007